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6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**

8 IVAN RODRIGUEZ RIVERA,

9 *Plaintiff,*

10 vs.

11 DR. ARANAS, *et al.*

12 *Defendants.*

2:09-cv-01692-KJD-RJJ

13 ORDER

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15 This *pro se* prisoner civil rights action by an inmate previously in the custody of the  
16 Nevada Department of Corrections (“NDOC”) comes before the Court for initial review under  
17 28 U.S.C. § 1915A.

18 When a “prisoner seeks redress from a governmental entity or officer or employee of  
19 a governmental entity,” the court must “identify cognizable claims or dismiss the complaint,  
20 or any portion of the complaint, if the complaint: (1) is frivolous, malicious, or fails to state a  
21 claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who  
22 is immune from such relief.” 28 U.S.C. § 1915A(b).

23 In considering whether the plaintiff has stated a claim upon which relief can be granted,  
24 all material factual allegations in the complaint are accepted as true for purposes of initial  
25 review and are to be construed in the light most favorable to the plaintiff. See, e.g., *Russell*  
26 v. *Landrieu*, 621 F.2d 1037, 1039 (9th Cir. 1980). However, mere legal conclusions  
27 unsupported by any actual allegations of fact are not assumed to be true in reviewing the  
28 complaint. *Ashcroft v. Iqbal*, \_\_\_\_ U.S. \_\_\_, 129 S.Ct. 1937, 1949-51 & 1954, 173 L.Ed.2d 868

1 (2009). That is, bare, naked and conclusory assertions that merely constitute formulaic  
2 recitations of the elements of a cause of action and that are devoid of further factual  
3 enhancement are not accepted as true and do not state a claim for relief. *Id.* Allegations of  
4 a *pro se* litigant are held to less stringent standards than are formal pleadings by lawyers.  
5 *Haines v. Kerner*, 404 U.S. 519, 520, 92 S.Ct. 594, 596, 30 L.Ed.2d 652 (1972).

6 In the complaint, plaintiff Ivana Rodriguez Rivera seeks to present claims for deliberate  
7 indifference to a serious medical need under the Eighth Amendment while incarcerated in the  
8 custody of NDOC. He seeks to bring claims against, in both their individual and official  
9 capacities: (a) Dr. Aranas, a physician employed by NDOC; (b) NDOC Director Howard  
10 Skolnik; (c) Dr. Karen Gedney, another physician employed by NDOC; (d) Dr. Robert  
11 Bannister, NDOC Medical Director; and (e) Dr. Sanchez, another physician employed by  
12 NDOC.

13 Plaintiff alleges that he had severe pain in his right testicle that radiated into his right  
14 side. While malpractice, misdiagnosis, and differences of opinion over diagnoses and  
15 treatment plans do not present a case of deliberate indifference under the Eighth  
16 Amendment, plaintiff includes allegations that arguably state a constitutional claim for relief.  
17 Plaintiff alleges that, after seeing him previously for the condition, Dr. Aranas and Dr. Sanchez  
18 told him not to visit them again because there was nothing that they could do for him, which  
19 he alleges constituted a refusal to provide medical care. Plaintiff further alleges that Dr.  
20 Gedney refused to authorize surgery recommended by a specialist to potentially remedy the  
21 condition after she asked him about his release date, telling him that the surgery was only  
22 cosmetic surgery that he would have to take care of after his release. He alleges that Dr.  
23 Gedney also discontinued his non-prescription pain medication and told him that he would  
24 have to buy more at the prison store. He alleges that she said "oh well" when he told her that  
25 he did not have money to purchase the medication. Construing the allegations in the  
26 complaint in the light most favorable to the plaintiff, these allegations state an Eighth  
27 Amendment deliberate indifference claim and potentially a claim for recovery of, *inter alia*,  
28 damages for pain and suffering at the pleading stage against the three doctors.

1       All official capacity – as opposed to individual capacity – claims against all defendants  
2 must be dismissed, however. Plaintiff may proceed under 42 U.S.C. § 1983 against state  
3 officials in their official capacity only for injunctive relief, and he may not seek damages from  
4 a state official in his or her official capacity. See *Will v. Michigan Dept. of State Police*, 491  
5 U.S. 58, 71 & n.10, 109 S.Ct. 2304, 2312 n.10, 105 L.Ed.2d 45 (1989). Any claims herein for  
6 injunctive relief have become moot following upon plaintiff's release from custody, such that  
7 he does not present a viable official capacity claim against any defendant.

8       Plaintiff additionally has failed to state a claim against defendants Howard Skolnik and  
9 Dr. Robert Bannister in their individual capacity. There is no *respondeat superior* liability  
10 under § 1983. That is, an allegation of inadequate supervision is insufficient to establish  
11 supervisory liability. A supervisor may be held liable in his individual capacity only if he either  
12 was personally involved in the constitutional deprivation or a sufficient causal connection  
13 existed between his unlawful conduct and the constitutional violation. See, e.g., *Jackson v.*  
14 *City of Bremerton*, 268 F.3d 646, 653 (9<sup>th</sup> Cir. 2001). Plaintiff alleges no viable basis for  
15 imposing liability on either defendant Skolnik or Bannister.

16       The Court will dismiss the claims against defendants Skolnik or Bannister in their  
17 individual capacity without prejudice, subject to plaintiff being able to amend the complaint to  
18 assert a claim against these defendants. The Court in the meantime will proceed forward with  
19 service, given the prior delay in reaching this case for screening.

20       IT THEREFORE IS ORDERED that the Clerk of Court shall file the complaint and that  
21 the following claims are DISMISSED without prejudice: (a) all official capacity claims against  
22 all defendants; (b) all claims for injunctive relief; and (c) the individual capacity claims against  
23 defendants Howard Skolnik and Dr. Robert Bannister, subject to leave to amend to state a  
24 claim for relief against these defendants in their individual capacity.

25       IT FURTHER IS ORDERED that the Clerk shall add Attorney General Catherine Cortez  
26 Masto as counsel for defendants and shall make informal electronic service of the complaint  
27 and this order upon defendants via a notice of electronic filing. Defendants should note that  
28 the complaint's factual allegations begin in the "Nature of the Case."

1 IT FURTHER IS ORDERED that the Attorney General shall advise the Court within  
2 twenty (20) days from entry of this order whether she can accept service of process for the  
3 named defendants. If the Attorney General accepts service of process for a defendant, such  
4 defendant shall file and serve an answer or other response to the complaint within thirty (30)  
5 days of the date of the notice of acceptance of service. If service is not accepted for any of  
6 the defendants, plaintiff must file a motion identifying the unserved defendant(s), requesting  
7 the issuance of a summons, and specifying a full name and address for said defendant(s).  
8 Plaintiff must complete service within 120 days from entry of this order.

9 IT IS FURTHER ORDERED that henceforth, plaintiff shall serve upon defendants or,  
10 if appearance has been entered by counsel, upon the attorney(s), a copy of every pleading,  
11 motion or other paper submitted for consideration by the court. Plaintiff shall include with the  
12 original paper submitted for filing a certificate stating the date that a true and correct copy of  
13 the document was mailed to the defendants or counsel for the defendants. If counsel has  
14 entered a notice of appearance, plaintiff shall direct service to the individual attorney named  
15 in the notice of appearance, at the address stated therein. The Court may disregard any  
16 paper received by a district judge or magistrate judge which has not been filed with the Clerk,  
17 and any paper received which fails to include a certificate of service.

18 IT FURTHER IS ORDERED that the Clerk shall mail a copy of this order to the  
19 Consulado de México in Las Vegas, Nevada at the address shown in #3.<sup>1</sup>

20 DATED: November 2, 2010



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24 KENT J. DAWSON  
25  
26 United States District Judge

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28 <sup>1</sup>The Consul is respectfully advised that neither the Court nor the Clerk is able to provide written  
status updates to non-litigants and/or to provide legal advice to either litigants or non-litigants as to the  
manner of proceeding in a case. The entire record may be viewed on the electronic docketing system on a  
public work station available at the Clerk's Office. The Court will endeavor to move this case forward more  
expeditiously from this point. Plaintiff has filed a notice of change of address reflecting an updated address in  
Ensenada, Baja California, Mexico following upon his release from custody in Nevada. See #6.